

## TERMS AND CONDITIONS S (4-91)

**1. BILLING INSTRUCTIONS.** (a) A packing list must accompany all shipments.

(b) Packing lists, delivery tickets, and any required invoices must show the subcontract number and must show car numbers when carload shipment is made.

(c) Render separate invoices, if required, for each and every shipment, and render invoice for returnable containers stating terms and conditions for return thereof.

(d) Mail one copy of all shipping papers to the Company's Accounts Payable Department at the address shown elsewhere in this subcontract.

**2. DEFINITIONS.** As used throughout this subcontract, the following terms shall have the meanings set forth below:

(a) The term "Government" means the United States of America and includes DOE.

(b) The term "DOE" means the Department of Energy or any duly authorized representative thereof.

(c) The term "Company" means Martin Marietta Energy Systems, Inc., acting under Contract No. DE-AC05-84OR21400 with DOE and includes any duly authorized representative thereof.

(d) The term "Seller" means the person or organization that has entered into this subcontract with the Company.

(e) Except as otherwise provided in this subcontract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this subcontract.

**3. TITLE AND ADMINISTRATION.** It is understood and agreed that title to all supplies furnished hereunder by the Seller shall pass directly from the Seller to the Government; that the Company is authorized to and will make payment hereunder from Government funds advanced and agreed to be advanced to it by DOE, and not from its own assets; and that administration of this subcontract may be transferred from the Company to DOE or its designee, and in case of such transfer and notice thereof to the Seller, the Company shall have no further responsibilities hereunder.

**4. OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this subcontract, or to any benefit arising from it. However, this clause does not apply to this subcontract to the extent that this subcontract is made with a corporation for the corporation's general benefit.

**5. COVENANT AGAINST CONTINGENT FEES.** (a) The Seller warrants that no person or agency has been employed or retained to solicit or obtain this subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Company shall have the right to annul this subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by the Seller for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or subcontracts nor holds itself out as being able to obtain any Government contracts or subcontracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by the Seller and subject to the Seller's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper

influence to solicit or obtain Government contracts or subcontracts nor holds out as being able to obtain any Government contracts or subcontracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or subcontract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Company employee or officer to give consideration or to act regarding a Company subcontract on any basis other than the merits of the matter.

**6. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE COMPANY OR THE GOVERNMENT.** (a) Except as provided in

(b) below, the Seller shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Company or the Government of any item or process (including computer software) made or furnished by the subcontractor under this subcontract or under any follow-on production subcontract.

(b) The prohibition in (a) above does not preclude the Seller from asserting rights that are otherwise authorized by law or regulation.

(c) The Seller agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this subcontract.

**7. ANTI-KICKBACK PROCEDURES.** (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

(1) Providing or attempting to provide or offering to provide

any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) When the Seller has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Seller shall promptly report in writing the possible violation. Such reports shall be made to the Company and the Inspector General of DOE or the Department of Justice.

(2) The Seller shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(3) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(3)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(3)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(4) The Seller agrees to incorporate the substance of this clause, including this subparagraph (c)(4) in all subcontracts under this subcontract.

**8. REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS.** (a) This clause applies only if supplies furnished under this subcontract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes--olive, watch holes--straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this subcontract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless

the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts or subcontracts, for a combination of contracts or subcontracts, or for stock.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of the Seller's or a subcontractor's order. If the order is declined or rejected, the Seller shall notify the Company promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue indebtedness of the Seller to the Plant as determined by the Plant, the Company shall evaluate the impact and make an equitable adjustment in the subcontract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Seller agrees to insert this clause, including this paragraph (e), in every subcontract unless the Seller has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

**9. NEW MATERIAL.** Unless this subcontract specifies otherwise, the supplies and components to be delivered under this subcontract shall be new (not used or reconditioned) and shall not be of such an age or so deteriorated as to impair their usefulness or safety.

**10. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS.** This is a rated order certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

**11. VARIATION IN QUANTITIES.** Unless otherwise specified, any variation in the quantity of any item called for by this subcontract, not exceeding 10%, will be accepted as compliance with this subcontract when caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and payments shall be adjusted accordingly.

**12. STOP-WORK ORDER.** (a) The Company may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this subcontract for a period of 90 days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Company shall either:

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. The Company shall make an equitable

adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified, in writing, accordingly, if:

(1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this subcontract; and

(2) The Seller asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Company decides the facts justify the action, the Company may receive and act upon the claim asserted at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**13. COMPANY DELAY OF WORK.** (a) If the performance of all or any part of the work is delayed or interrupted (1) by an act of the Company in the administration of this subcontract, which act is not expressly or impliedly authorized by this subcontract, or (2) by its failure to act within the time specified in this subcontract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this subcontract caused by such delay or interruption and the subcontract shall be modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Seller; or (2) for which an adjustment is provided or excluded under any other provision of this subcontract.

(b) No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Seller shall have notified the Company in writing of the act or failure to act involved; and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under this subcontract.

**14. CONVICT LABOR.** The Seller agrees not to employ any person undergoing sentence of imprisonment in performing this subcontract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

**15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION.** (a) Overtime Requirements.

No Seller or subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a

territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for Unpaid Wages and Liquidated Damages. The Company shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or subcontractor under any such subcontract with the Company, or any other Federal contract with the Seller, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the Seller, such sums as may be determined to be necessary to satisfy any liabilities of such Seller or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and Basic Records. (1) The Seller or subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of 3 years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Seller or subcontractor for inspection, copying, or transcription by authorized representatives of the Company, DOE, or the Department of Labor. The Seller or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Seller or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

**16. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS.**

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against any employee or applicant because of physical or mental handicap. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as:

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued

under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Seller agrees to post employment notices stating (i) the Seller's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Company.

(3) The Seller shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Seller is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Seller does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Director to enforce the terms, including action for noncompliance.

**17. BUY AMERICAN ACT.** (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above \$25,000 in value, components of Canadian origin are treated as domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this subcontract.

(b) The Seller shall deliver only domestic end products, except those:

- (1) For use outside the United States;
- (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (3) For which DOE determines that domestic preference would be inconsistent with the public interest; or
- (4) For which DOE determines the cost to be unreasonable (see Section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

**18. RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS.** (a) Definitions. (1) "Component part" means any

article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

(2) "Finished product" means any article which is usable for its intended function without being imbedded in, or integrated into, any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

(3) "Sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed.

(4) "Substantially transformed," when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use.

(b) General. Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of three years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation, or (4) Kongsberg Vaapenfabrikk. The Act and Executive Order also prohibit, for the same three-year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) Restriction. Unless listed by the Seller in its offer, or unless one of the exceptions in paragraph (d) of this clause applies, the Seller agrees that no products or services delivered to the Company under this subcontract will be products or services of a sanctioned person.

(d) Exceptions. The restrictions do not apply:

(1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

(2) To products or services of a sanctioned person, provided:

(i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand, or name of the nonsanctioned person;

(ii) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and

(iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003(a) or (b).

(e) Award. Award of any subcontract resulting from this solicitation will not affect the Seller's obligation to comply with importation regulations of the Secretary of the Treasury.

**19. AUTHORIZATION AND CONSENT.** The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this subcontract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United

States (a) embodied in the structure or composition of any article the delivery of which is accepted by the Company under this subcontract or (b) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Seller or the using subcontractor with (1) specifications or written provisions now or hereafter forming a part of this subcontract, or (2) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this subcontract or any subcontract hereunder (including all lower-tier subcontracts), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**20. FEDERAL, STATE, AND LOCAL TAXES.** (a) Definitions. As used throughout this clause, the following terms shall have the meaning set forth below:

(1) The term "direct tax" means any tax or duty directly applicable to the completed supplies or services covered by this subcontract, or any other tax or duty from which the Seller or this transaction is exempt. It includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipt from sales, or use of the supplies or services covered by this subcontract. The term does not include transportation taxes, unemployment compensation taxes, social security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term "direct tax" as set forth above in this paragraph.

(2) The term "subcontract date" means the effective date of this subcontract if it is a negotiated subcontract, or the date set for the opening of bids if it is a subcontract entered into as a result of formal advertising.

(b) Federal Taxes. Except as may be otherwise provided in this subcontract, the subcontract price includes all applicable Federal taxes in effect on the subcontract date.

(c) State or Local Taxes. Except as may be otherwise provided in this subcontract, the subcontract price does not include any State or local direct tax in effect on the subcontract date.

(d) Evidence of Exemption. The Company agrees, upon request of the Seller, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the subcontract price pursuant to this clause; and the Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify the Company of such refusal, (2) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (3) if so directed by the Company to take all necessary action, in cooperation with and for the benefit of the Government, to secure a refund of such tax (in which event the Company agrees to reimburse the Seller for any and all reasonable expenses incurred at its direction).

(e) Price Adjustment. If, after the subcontract date, the Federal Government or any State or local Government either (1) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d), hereof, with respect to any direct tax excluded from the subcontract price, and if under either (1) or (2) the Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the subcontract price shall be correspondingly increased.

If, after the subcontract date, the Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the subcontract price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees promptly to notify the Company of such relief, and the subcontract price shall be correspondingly decreased or the amount of such relief paid over to the Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the subcontract price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

(f) Refund or Drawback. If any tax or duty has been included in the subcontract price or the price as adjusted under paragraph (e) of this clause, and if the Seller is entitled to a refund or drawback by reason of the export or reexport of supplies covered by this subcontract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees that he will promptly notify the Company thereof and that the amount of any such refund or drawback obtained will be paid over to the Company for the benefit of the Government or credited against amounts due from the Company under this subcontract: Provided, however, That the Seller shall not be required to apply for such refund or drawback unless so requested by the Company.

**21. PAYMENTS.** The Seller shall be paid (upon the submission of invoices or vouchers in a form satisfactory to the Company, if invoices are required by this subcontract) the prices stipulated in this subcontract for supplies delivered and accepted, or services rendered and accepted, less any deductions provided in this subcontract. Unless otherwise specified in this subcontract, payment will be made on partial deliveries accepted by the Company when the amount due on such deliveries so warrants.

**22. DISCOUNTS FOR PROMPT PAYMENT.** (a) Any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer. Awardees not offering a prompt payment discount in their offers may include prompt payment discounts on any required individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the latest of: (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points; or (2) the date of acceptance under specific terms of the subcontract; or (3) the date a proper invoice or voucher is received in the office specified by the Company. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check.

**23. ASSIGNMENT OF CLAIMS.** (a) The Seller, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this subcontract, payments to an assignee of any amounts due or to become due under this subcontract shall not, to the extent specified in the Act, be subject to reduction or

setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this subcontract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this subcontract.

(c) The Seller shall not furnish or disclose to any assignee under this subcontract any classified document (including this subcontract) or information related to work under this subcontract until the Company authorizes such action in writing.

**24. ASSIGNMENT.** Neither this subcontract nor any interest therein shall be assigned or transferred by the Seller except as expressly authorized in writing by the Company.

**25. PROTEST AFTER AWARD.** (a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR), the Company may, by written order to the Seller, direct the Seller to stop performance of the work called for by this subcontract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Company shall either:

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified, in writing, accordingly, if:

- (1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this subcontract; and
- (2) The Seller requests an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Company decides the facts justify the action, the Company may receive and act upon the request at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Company's rights to terminate this subcontract at any time are not affected by action taken under this clause.

**26. PERMITS AND LICENSES.** Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

**27. CHANGES.** (a) The Company may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this subcontract, in any one or more of the following:

- (1) Drawings, designs, or specifications, where supplies to be furnished are to be specially manufactured for the Government in accordance therewith;
- (2) Method of shipment or packing; and
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this subcontract, whether or not changed by the order, an equitable adjustment shall be made in the subcontract price, the delivery schedule, or both, and the subcontract shall be modified in writing accordingly.

(c) The Seller must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt by the Seller of the written order. However, if the Company decides that the facts justify such action, it may receive and act upon a proposal submitted prior to final payment under this subcontract.

(d) Where the cost of property made obsolete or excess as a result of a change is included in the Seller's proposal for adjustment, the Company shall have the right to prescribe the manner of disposition of such property.

(e) Nothing in this clause shall excuse the Seller from proceeding with the subcontract as changed.

**28. MODIFICATIONS.** Any changes, alterations, or modifications to this subcontract must be made by an instrument in writing and to be binding on the Company must be executed by a duly authorized employee of the Company's Purchasing Division.

**29. GOVERNMENT PROPERTY.** (a) Government-Furnished Property. (1) The Company shall deliver to the Seller, for use in connection with and under the terms of this subcontract, the property described in this subcontract as Government-furnished property, together with any related data and information that the Seller may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Seller at the times stated in this subcontract or, if not so stated, in sufficient time to enable the Seller to meet the subcontract's delivery or performance dates.

(3) If Government-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt of it, notify the Company, detailing the facts, and, as directed by the Company and at Company expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, the Company shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Seller by the required time, the Company shall, upon the Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-Furnished Property. (1) The Company may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this subcontract, or (ii) substitute other Government-furnished property for the property to be provided by the Company, or to be acquired by the Seller for the Government, under this subcontract. The Seller shall promptly take such action as the Company may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Seller's written request, the Company shall

make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the Company has agreed in the subcontract to make the property available for performing this subcontract and there is any:

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract, subcontract, or lease.

(c) Title in Government Property. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Seller for the Government under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when the Company has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this subcontract contains a provision directing the Seller to purchase material for which the Company will reimburse the Seller as a direct item of cost under this subcontract:

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon:

(A) Issuance of the material for use in subcontract performance;

(B) Commencement of processing of the material or its use in subcontract performance; or

(C) Reimbursement of the cost of the material by the Company, whichever occurs first.

(d) Use of Government Property. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the Company.

(e) Property Administration. (1) The Seller shall be responsible and accountable for all Government property provided under this subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5, as in effect on the date of this subcontract.

(2) The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and DOE Acquisition Regulation Subpart 945.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Company under this subcontract, the Company shall replace the items or the Seller shall make such repairs as the Company directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the Company. When any property for which the Company is responsible is replaced or repaired, the Company shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Seller represents that the subcontract price does not include any amount for repairs or replacement for which the Company is responsible. Repair or replacement of property for which the Seller is responsible shall be accomplished by the Seller

at its own expense.

(f) Access. The Company and the Government and their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of Loss. Unless otherwise provided in this subcontract, the Seller assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Seller or upon passage of title to the Government under paragraph (c) of this clause. However, the Seller is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this subcontract.

(h) Equitable Adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the Company may initiate an equitable adjustment in favor of the Company. The right to an equitable adjustment shall be the Seller's exclusive remedy. The Company shall not be liable to suit for breach of contract for:

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Company is responsible.

(i) Final Accounting and Disposition of Government Property. Upon completing this subcontract, or at such earlier dates as may be fixed by the Company, the Seller shall submit, in a form acceptable to the Company, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this subcontract or delivered to the Company. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Company. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to the Company as the Company directs.

(j) Abandonment and Restoration of Seller's Premises. Unless otherwise provided herein, the Company and the Government:

(1) May abandon any Government property in place, at which time all obligations of the Company and the Government regarding such abandoned property shall cease; and

(2) Have no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas Subcontracts. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**30. INSPECTION OF SUPPLIES.** (a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Seller shall provide and maintain an inspection system acceptable to the Company covering supplies under this subcontract and shall tender to the Company for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Seller to be in conformity with subcontract requirements. As part of the system, the Seller shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Company during subcontract performance and for as long afterwards as the subcontract requires. The Company may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right of review, whether exercised or not, does not relieve the Seller of the obligations under the subcontract.

(c) The Company has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Company shall perform inspections and tests in a manner that will not unduly delay the work. The Company assumes no contractual obligation to perform any inspection and test for the benefit of the Seller unless specifically set forth elsewhere in this subcontract.

(d) If the Company performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, the Company shall bear the expense of Company inspections or tests made at other than the Seller's or subcontractor's premises; *provided*, that in case of rejection, the Company shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Seller for inspection or test, the Company may charge to the Seller the additional cost of inspection or test.

(2) The Company may also charge the Seller for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Company has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. The Company may reject nonconforming supplies with or without disposition instructions.

(g) The Seller shall remove supplies rejected or required to be corrected. However, the Company may require or permit correction in place, promptly after notice, by and at the expense of the Seller. The Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Seller fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Company may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Seller or (2) terminate the subcontract for default. Unless the Seller corrects or replaces the supplies within the delivery schedule, the Company may require their delivery and make an equitable price reduction.

(i) (1) If this subcontract provides for the performance of Company quality assurance at source, and if requested by the Company, the Seller shall furnish advance notification of the time (i) when Seller inspection or tests will be performed in accordance

with the terms and conditions of the subcontract and (ii) when the supplies will be ready for Company inspection.

(2) The Company request shall specify the period and method of the advance notification and the Company representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Company representative is in residence in the Seller's plant, nor more than 7 workdays in other instances.

(j) The Company shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. Company failure to inspect and accept or reject the supplies shall not relieve the Seller from responsibility, nor impose liability on the Company, for nonconforming supplies.

(k) Inspections and tests by the Company do not relieve the Seller of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Company, in addition to any other rights and remedies provided by law, or under other provisions of this subcontract, shall have the right to require the Seller (1) at no increase in subcontract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Seller's plant at the Company's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Seller and the Company; *provided*, that the Company may require a reduction in subcontract price if the Seller fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Seller of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the Company elects not to require correction or replacement. When supplies are returned to the Seller, the Seller shall bear the transportation cost from the original point of delivery to the Seller's plant and return to the original point when that point is not the Seller's plant. If the Seller fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Company may authorize in writing) after receipt of notice from the Company specifying such failure, the Company shall have the right by contract or otherwise to replace or correct such supplies and charge to the Seller the cost occasioned the Company thereby.

**31. WARRANTY OF SUPPLIES.** (a) Notwithstanding inspection and acceptance by the Company of supplies furnished under this subcontract or any provision of this subcontract concerning the conclusiveness thereof, and supplementing any other specific guarantees or warranties provided for in any other provisions of this subcontract, the Seller warrants that for one year after such supplies are placed in operation (but in no event to exceed 24 months from the date of delivery of such supplies), all supplies furnished under this subcontract will be free from defects in design (other than design provided by the Company), material, or workmanship, and will conform with the specifications and all other requirements of this subcontract.

(b) The Company shall give written notice to the Seller of any breach of the warranties in paragraph (a) of this clause within 120 days after discovery of the defect.

(c) Within a reasonable time after such notice, the Company may either:

(1) By written notice require the prompt correction or replacement of any supplies or parts thereof that do not conform with the requirements of this subcontract within the meaning of paragraph (a) of this clause; or

(2) Where it determines that because of operational requirements corrective work in fulfillment of this warranty must be performed at the site of installation by employees of the Company, DOE, or another of DOE's contractors, proceed with such corrective work and the Seller shall be liable for all costs occasioned in the performance of such corrective work; or

(3) Retain such supplies and reduce the subcontract price by an amount equitable under the circumstances.

(d) If this subcontract provides for inspection of supplies by sampling procedures, conformance of supplies or components thereof subject to warranty action shall be determined in accordance with the applicable sampling procedures contained in this subcontract. For sampling purposes, the Company may group any supplies delivered under this subcontract. The size of the sample shall be that required by sampling procedures specified in the subcontract for the quantity of supplies on which warranty action is proposed. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection, Provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed. The original inspection lots need not be reconstituted, nor shall the Company be required to use the same lot size as on original inspection. Within a reasonable time after notice of any breach of warranties in paragraph (a) of this clause as determined herein, the Company may exercise one or more of the following options:

(1) Require an equitable adjustment in the subcontract price for any group of supplies;

(2) Screen the supplies grouped under this clause at Seller's expense and return all nonconforming supplies to the Seller for correction or replacement;

(3) Return the supplies grouped under this clause to the Seller (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(e) When return, correction, or replacement is required, transportation charges and responsibility for such supplies while in transit shall be borne by the Seller. However, the Seller's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this subcontract and the Seller's plant, and return.

(f) The Company may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies and charge to the Seller the cost occasioned to the Company thereby if the Seller (1) fails to make redelivery of the corrected or replaced supplies within the time established for their return, or (2) fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Company may authorize in writing) after receipt of notice from the Company specifying such failure. In lieu of correction or replacement by the Company, the Company may require an equitable adjustment of the subcontract price. In addition, if the Seller fails to furnish timely disposition instructions, the Company may dispose of the nonconforming supplies for the Seller's account in a reasonable manner. The Company is entitled to reimbursement from the Seller or from the proceeds of such disposal for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(g) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially

delivered. The warranty with respect to such supplies or parts thereof shall be equal in duration to that set forth in (a) above and shall run from the date of delivery of such corrected or replaced supplies.

(h) The word "supplies" as used herein means the end item furnished by the Seller and related services required under this subcontract. The word does not include technical data.

(i) All implied warranties of merchantability and "fitness for a particular purpose" are hereby excluded from any obligation contained in this subcontract.

(j) The rights and remedies of the Company provided in this clause are in addition to and do not limit any rights afforded to the Company by any other clause of this subcontract.

(k) The Seller shall be liable for the reasonable costs of disassembly and reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

### **32. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT.**

The Company, by written notice, may terminate this subcontract, in whole or in part, when it is in the Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Seller, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract. For this purpose, the terms "Government" and "Contracting Officer" in Part 49 shall mean the Company, and the term "Contractor" shall mean the Seller.

**33. DEFAULT.** (a) (1) The Company may, subject to paragraphs (c) and (d) below, by written notice of default to the Seller, terminate this subcontract in whole or in part if the Seller fails to:

(i) Deliver the supplies or to perform the services within the time specified in this subcontract or any extension;

(ii) Make progress, so as to endanger performance of this subcontract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this subcontract (but see subparagraph (a)(2) below).

(2) The Company's right to terminate this subcontract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Seller does not cure such failure within 10 days (or more if authorized in writing by the Company) after receipt of the notice from the Company specifying the failure.

(b) If the Company terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the Company considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Company for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform this subcontract arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in

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sufficient time for the Seller to meet the required delivery schedule.

(e) If this subcontract is terminated for default, the Company may require the Seller to transfer title and deliver to the Government, as directed by the Company, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this subcontract. Upon direction of the Company, the Seller shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Company shall pay the subcontract price for completed supplies delivered and accepted. The Seller and the Company shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The Company may withhold from these amounts any sum the Company determines to be necessary to protect the Company and the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Company and the Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.